

IN THE COURT OF APPEALS OF IOWA

No. 6-189 / 05-0904
Filed May 10, 2006

**IN RE THE MARRIAGE OF DANIEL DOSTART
AND JAMIE DOSTART**

**Upon the Petition of
DANIEL DOSTART,**
Petitioner-Appellant,

**And Concerning
JAMIE DOSTART,**
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley,
Judge.

Daniel Dostart appeals the property division and child support and alimony provisions of the decree dissolving his marriage to Jamie Dostart. **AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED IN PART.**

Kyle Williamson of Williamson Law Office, Davenport, for appellant.

Cynthia Taylor of Zamora, Tylor, Clark, Alexander & Woods, Davenport,
for appellee.

Considered by Huitink, P.J., and Vaitheswaran and Eisenhauer, JJ.

HUITINK, P.J.***I. Background Facts and Proceedings.***

Daniel and Jamie Dostart were married in September 1986. They have two children: Alexa, age sixteen, and Aaron, age fourteen.

Daniel is forty-one years old. He served in the United States Air Force from April 19, 1984, until his retirement in January 2005. Daniel earned two associate degrees and a bachelor's degree while in the Air Force. In the two years before his retirement, Daniel earned between \$41,000 and \$50,000 annually. His military pension income is \$1663 per month. At the time of trial Daniel was living with his mother in Waterloo and was unemployed.

Jamie is forty years of age. She has been employed as an airport screener by the Transportation Security Administration for the last two years. Her annual income is \$29,036. Jamie has completed one year of community college courses and has also partially completed the coursework necessary to work as a licensed practical nurse. At the time of trial Jamie was living with the parties' children in the family home the parties purchased in 1994.

Daniel's petition to dissolve the parties' marriage was filed on January 12, 2004. The trial court's January 26, 2004, temporary order required Daniel to pay \$873.90 monthly child support until the final decree was entered. In addition, the temporary order stated:

In order to maintain the mortgage payments on the [family home] the Court finds that it is reasonable to require [Daniel] to pay [Jamie] the sum of \$783 per month, being his basic adjustment for housing, so that she may make the mortgage payments on the homestead during the pendency of this proceeding . . . [and] [Daniel] shall pay to [Jamie] through the Clerk of this Court the sum of \$783 per month commencing on February 1, 2004, until a final

decree is entered to be applied on the mortgage payment on the parties' homestead.

In the final decree the court granted Jamie sole custody of the children. Based on Daniel's \$1663 monthly pension and Jamie's \$29,036 salary, the court ordered Daniel to pay \$404.78 monthly child support. Daniel was also ordered to pay rehabilitative alimony to Jamie in the amount of one dollar per year, not to exceed twenty years.

The court also determined the fair market value of the parties' homestead was \$140,000 and the remaining mortgage balance was \$110,000. Jamie was permitted to remain in the parties' home until Aaron reaches eighteen years of age or graduates from high school. On the occurrence of the first of those events, the court ordered the home sold and the equity divided. Jamie was ordered to pay the monthly mortgage payments, insurance, and real estate taxes. The court also added the following conditions concerning division of the parties' home equity:

In the event the property does not sell for more than \$140,000 plus the cost and expenses of sale, then and in that event the net proceeds from the sale shall be divided between the parties by first paying Jamie the amount by which she has reduced the principal amount of the mortgage on the property since January 1, 2005, then reducing the proceeds by the cost of sale and then dividing those net proceeds in half between the parties.

The court also divided Daniel's military pension. Jamie was awarded a portion of Daniel's pension equal to one-half of the fraction of the pension where the numerator is the 220 months Daniel and Jamie were married, and the denominator is the 229 months Daniel was in the service. As a result, Jamie will receive approximately \$600 per month of Daniel's \$1663 pension.

The liabilities at issue included the parties' credit card debt. The court ordered Daniel to pay a USA Visa credit card balance of \$12,000 and the balance of an MBNA Visa card. Jamie was ordered to pay the American furniture account card balance of \$1000, the Lowe's credit card account balance of \$3675.68, and the Sears account balance of \$882.

On appeal, Daniel raises the following issues:

- I. The trial court erred in not satisfying the payments under the temporary order since Appellant was no longer receiving the basic adjustment for housing at the time of trial, and had stopped receiving those payments in January of 2005.
- II. The court erred in division of debts in that the court awarded all debt except the mortgage to Daniel and none to Jamie.
- III. The child support calculations and award of support are not in accordance with the supreme court guidelines, no reason for deviation exists or was given and is therefore in error and should be corrected.
- IV. The court erred in awarding rehabilitative alimony to Jamie in the amount of \$1.00 per year for twenty years as there was no showing that Jamie had any plans to continue her education.

Jamie does not cross-appeal.

II. Standard of Review.

Dissolution of marriage proceedings are equitable actions and are subject to de novo review. Iowa R. App. P. 6.4; *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). "Although our review of the trial court's award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity." *In re Marriage of Spiegel*, 553 N.W.3d 309, 319 (Iowa 1996) (citing *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996)). "We are not bound by the district court's findings of fact, but we do give them deference because the district court

had the opportunity to view, firsthand, the demeanor of the witnesses when testifying.” *Kurttt*, 561 N.W.2d at 387.

III. Property Division.

In dividing the parties’ property, the court must consider (1) the length of the marriage, (2) the property brought into the marriage, (3) the age and health of each party, (4) the earning capacity of each party, (5) any spousal award, and (6) other economic factors. Iowa Code § 598.21(1) (2003); *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005).

A. Home Equity.

As noted earlier, Daniel was receiving a \$783 monthly basic housing adjustment at the time the January 26, 2004, temporary order was entered. He claims that his obligation to pay Jamie that amount expired on January 1, 2005, when he retired from the Air Force and no longer received a basic housing adjustment. He accordingly argues that the court should not have credited Jamie’s share of their home equity for home mortgage payments she made after January 1, 2005. We disagree.

Daniel’s argument conflicts with the express terms of the temporary order requiring him to pay Jamie \$783 per month until the final decree was entered. In the absence of any language in the temporary order providing for termination of Daniel’s obligation to pay Jamie \$783 a month, that obligation continued until the final decree was entered. In any event, we find the trial court equitably resolved this issue by crediting Jamie’s share of the home equity for the payments she made after January 1, 2005. We affirm on this issue.

B. Credit Card Debts.

The gist of Daniel's argument is that all of the parties' credit card debt was rolled over to credit card balances he was ordered to pay in the final decree and, as a result, the credit card balances Jamie was ordered to pay were already satisfied. The record on this issue is at best incomplete. The parties apparently agreed that the \$12,000 balance owed on the automobile awarded to Jamie was included in a credit card balance assigned to Daniel. The evidence concerning the balances owed on the American Furniture, Sears, and Lowe's accounts is disputed. Neither party produced current credit card statements substantiating their respective claims.

If, as Daniel claims, the net effect of the trial court's decree requires him to pay all of the parties' credit card debt, the resulting inequity requires modification of the decree. We, however, are unable to resolve this issue based on this record without the prospect of compounding the inequities. Under these circumstances, we believe the most appropriate course of action is to remand this issue to the trial court to determine the actual balances of the accounts as of the date of trial. If the balances were rolled over as claimed, the trial court shall divide the parties' credit card debt in the same proportion as originally ordered. If the court finds the balances were in the amounts Jamie claims, the division of the credit card debt ordered in the final decree is affirmed.

IV. Child Support.

A parent's child support obligation is determined by application of the Uniform Child Support Guidelines. Iowa Code § 598.21(4)(a). The amount of child support awarded is based upon a percentage of the parent's net monthly

income and number of children. Iowa Ct. R. 9.26. Net monthly income means gross monthly income less specified deductions. Iowa Ct. R. 9.5.

As noted earlier, Daniel's child support obligation was based on his \$1663 monthly pension, less those deductions specified by rule 9.5. Daniel correctly argues that the trial court failed to reduce the amount of his gross monthly income by the percentage of his pension income awarded to Jamie, and the resulting guideline amount is therefore incorrect. Moreover, there is no indication in the trial court's findings that a deviation from the guidelines was necessary or appropriate in this case. We accordingly remand to the trial court for recalculation of Daniel's child support obligation using the correct amount of Daniel's gross monthly income and/or earning capacity. The trial court shall also consider whether a deviation from the guideline amount is appropriate in this case. Pending the resolution of this issue on remand, Daniel shall continue to pay the child support ordered in the final decree.

V. Alimony.

"Alimony is not an absolute right; an award depends upon the circumstances of each case." *Kurtz*, 561 N.W.2d at 387. "When determining the appropriateness of alimony, the court must consider '(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other.'" *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa Ct. App. 1994) (quoting *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa Ct. App. 1983)). "Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person." *Miller*, 524 N.W.2d at 445. "Alimony may be used to remedy inequities in a marriage and to compensate a spouse who leaves

the marriage at a financial disadvantage.” *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993) (citing *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa Ct. App. 1991)). Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *In re Marriage of Francis*, 442 N.W.2d 59, 63-64 (Iowa 1989) (citations omitted). Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic dependence of the exspouses. *Id.*

The trial court’s alimony award was premised on Jamie’s unfulfilled aspiration to become a licensed practical nurse. The record, however, fails to show how becoming a licensed practical nurse would improve Jamie’s prospects for self-sufficiency beyond that she already enjoys. Because Jamie does not need rehabilitative alimony to achieve self-sufficiency, we modify the trial court’s decree by deleting the trial court’s alimony award.

Both parties shall pay their own appellate attorney fees and one-half of the costs on appeal.

The trial court’s decree is affirmed in part, modified in part, and remanded for further proceedings in conformity with our opinion.

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED IN PART.